

February, 2017

**Quebec Revises Regulations for Business Signs Under its
Charter of the French Language**

Businesses operating in Quebec should check their signage following recent legislative changes. In November, 2016 the provincial government in Quebec enacted revisions to the *Regulation respecting the language of commerce and business* (the “*Regulation*”), under its *Charter of the French Language* (the “*Charter*”). Businesses that operate from or advertise at premises in Quebec should begin working on changes that may be required to comply with the *Charter* and the *Regulation* so that they will be in compliance by the end of the transitional phase-in period (November 2019). This summary is provided as an introduction. Businesses affected by this change should also consult with Quebec-qualified legal counsel.

Background: Quebec Court of Appeal Ruling, 2015

In April 2015 the Quebec Court of Appeal¹ upheld a 2014 trial court decision that international businesses such as Best Buy, Costco, Gap and Walmart (the “*Companies*”) complied with the *Charter* and the *Regulation* in their use of English-language trade-marks on store-fronts. The Quebec government had challenged the *Companies*’ use of advertising and signage that relied upon the exceptions in the *Regulation*, which permit the use of an English-language or other-language trade-mark (within the meaning of the *Trade-marks Act*, i.e. either a common law trade-mark or a registered trade-mark) so long as a French version of the trade-mark has not been registered.² The government

¹ Quebec (Procureure général) c. Magasins Best Buy Itée. April 27 2015 (Que. C.A. 747), <https://www.canlii.org/en/qc/qcca/doc/2015/qcca747/2015qcca747.html> (the “*Best Buy Decision*”).

² The *Charter*’s provisions relating to labels, containers, catalogues and brochures are contained in ss. 51 and 52. The exceptions for trade marks appear in the *Regulation*’s Division I (for labels, containers etc.), s. 7(4) and Division II (for catalogues, brochures etc.), s. 13 (4). The “public signage” provision of the *Charter*, s. 58, requires that advertising either be in French or, for signs that include other language, French must be “markedly predominant”.

had argued that the exception should be read very narrowly, and that the Companies should be permitted to use their English-language trade-marks only in combination with French-language generic terms. The courts disagreed, allowing the Companies' advertising practices to continue, including their reliance on the exception for English-language trade-marks.

Amendments for Public Signage Enacted, November, 2016

The Quebec government responded to the Best Buy Decision by enacting amendments to the *Regulation* that limit the circumstances in which English-language trade-marks can be used on public signage. The revised *Regulation* incorporates a new "*Regulation defining the scope of the expression 'markedly predominant' for the purposes of the Charter of the French language.*" As a result of the amendments, public signs, posters, and commercial advertising "displayed outside an immovable" (i.e., on a building, or in a shopping mall) are still permitted to include a trade-mark that appears only in English, but only if accompanied by the "sufficient presence of French". This "sufficient presence" will include a generic term or description of the products or services being offered for sale, a slogan, or any other term or indication pertaining to the products or services. Among other things, the advertising must "give French permanent visibility, similar to that of the trade-mark". Signage and posters in French must be "designed, lighted and situated so as to make them easy to read, both at the same time, at all times when the trade mark is legible".³ The amended *Regulation* specifies that the French-language aspects of the signage will be evaluated from the usual perspective for signs visible from a sidewalk, in a mall, or from a highway, and that certain information will be excluded from the "sufficient presence of French" requirement, such as business hours, telephone numbers and addresses, numbers and percentages.⁴

Further Advice and Changes to Signage

New signage must comply with the amended *Regulation* when installed. Existing signage must comply with the amended *Regulation* by November 24, 2019.⁵

³ Amendments to the Regulation are now in subsections 25.1 to 25.5. The "sufficient presence of French" requirements are in s. 25.1 and 25.3.

⁴ The requirements for visibility are in s. 25.4 and the exclusions are in s. 25.5.

⁵ The three-year transition is available for signs or posters that existed on November 24, 2016. The three-year transition also applies to signs or posters already used in the province of Quebec

Businesses that advertise on buildings and other locations in Quebec should consider how these changes will affect their signage, and may also need to consult with Quebec-licensed legal counsel to ensure compliance with the amended *Regulation*.

Please address questions about any advertising and marketing matters to Carol Anne O'Brien at caob@caobrienlaw.com, or (416) 640-7270. Practice limited to providing advice on federal and Ontario law; Quebec-specific advice to be provided by Quebec-qualified legal counsel.

Carol Anne O'Brien's law practice is focused on regulatory matters including communications law (broadcasting and telecommunications), competition law, advertising and marketing, Internet domain names and privacy.

as part of a franchise system or otherwise, and to new or replacement signs for which municipal zoning permits or other government applications had been filed in the nine months before November 9, 2016.